IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

CIVIL APPLICATION NO. 461 OF 2006.
IN
WRIT PETITION NO. 8543 OF 2004 .

Freny Bhagat ... Applicant.
V/s.
Nagindas Rathod & ors. ... Respondents.

Shri Amol P. Mhatre for the applicant.

Shri D.J. Luilia for the respondents.

CORAM : V.C.DAGA, J.

DATED : 4.9.2006.

P.C. :

. Heard learned Counsel for the rival parties.

2. By this application, the applicant is seeking to re-call the order dated 31.8.2005, whereby petition came to be dismissed for want of prosecution. The present application is filed practically after expiry of 12 months to recall the said order dated 31.8.2005.

3. During the course of hearing, learned Counsel for the Applicant was asked to satisfy whether petition on merits needs consideration,so as to avoid futile exercise of recalling order dated 31.8.2005 and then to dismiss the petition on merits.

4. It was pointed out that the original petitioner was never in possession of the suit premises. One Shri Engineer was in possession thereof; claiming to be the person holding possession of the premises in his own rights.

5. In the execution proceeding action was initiated under Order 21 Rule 97 of the Civil Procedure Code for removal of obstruction. Obstructiion was removed and decree came to be executed. As on date, decree-holder is in possession of the suit premises.

6. It is thus clear that the applicant was never in possession of the suit premises. Had he been in possession, obstructionist could not have obstructed execution of the decree. The petitioner is not in a position to state his relationship with the original judgment debtor. In this view of the matter, no useful purpose would be served by recalling the order dated 31.8.2005 and restoring petition to file for hearing. The application is without any substance. The same is liable to be dismissed.

7. In the result, application is dismissed for the reasons recorded. No order as to costs.

(V.C.DAGA,J.)